

Reg. III. General application; apportionment and allocation defined.—

Miscellaneous Multistate Materials (RIA)

Reg. General application; apportionment and allocation defined.—

This article does not extend or contract the tax jurisdiction of a particular state or subdivision to subject or not subject a particular taxpayer to an income tax. Jurisdiction must be determined under the law of the particular state or subdivision under the tests set by federal and state constitutional provisions, statutes (including Public Law 86-272), or other applicable local law. This Article is intended to permit taxpayers to avoid duplicative taxation by making available to them the apportionment and allocation provisions of Article IV, and to simplify tax compliance for certain taxpayers by giving them the option of using a short form return for the computation of taxes.

The word "apportionment" generally refers to the division of net income between jurisdiction by the use of a formula containing apportionment factors, and the word "allocation" generally refers to the assignment of net income to a particular jurisdiction.

Reg. III.1.(a) Taxpayer option, state and local taxes; state apportionment and allocation.—

Miscellaneous Multistate Materials (RIA)

Reg. Taxpayer option, state and local taxes; state apportionment and allocation.—

This option is available to taxpayers whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of the party state. The provisions of this compact are a part of the law of a compact state. To qualify for election, therefore, the taxpayer's income must be subject to apportionment and allocation either (1) under the income tax laws of the party state, other than by reason of Article IV, or (2) under Article IV.

To qualify for apportionment and allocation in accordance with Article IV, the taxpayer must have income from business activity taxable both within and without the party state, within the meaning of Article IV. The state other than the state of election need not be a party state.

The election is available where the taxpayer has income either apportionable between two or more states or allocable to two or more states, or both.

Reg. III.1.(a) Taxpayer option, state and local taxes; state apportionment and allocation.—

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To qualify for apportionment and allocation in accordance with Article IV, the taxpayer must have income from business activity taxable both within and without the party state, within the meaning of Article IV. The state other than the state of election need not be a party state.

The election is available where the taxpayer has income either apportionable between two or more states or allocable to two or more states, or both.

Reg. III.1.(b). Taxpayer option, state and local taxes; local apportionment and allocation.—

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Reg. Taxpayer option, state and local taxes; local apportionment and allocation.—

(1) Generally. This option is available to taxpayers whose income is subject to apportionment and allocation pursuant to the laws of subdivisions of two or more party states. To qualify for election, therefore, the taxpayer's income must be subject to apportionment and allocation either under the laws of the subdivisions without regard to Article IV, or, under Article IV.

To qualify for apportionment and allocation under Article IV, the taxpayer may have income from business activity apportionable between subdivisions of two or more party states, or may have income apportionable to one or more subdivisions another party state, or may have nonbusiness income allocable to one or more subdivisions in two or more party states.

(2) Entire tax base. "Entire tax base" means the total income of the taxpayer which is apportionable and allocable for purposes of income taxation. The taxpayer qualifying for the election may elect the subdivision's apportionment and allocation provisions or the provisions of Article IV with respect to any one or more subdivisions in any one or more states.

(3) Base limitation. In determining the limitation of the last sentence of this Article III.1., the total net income apportioned and allocated to the state "with

respect to a state income tax" is measured by applying Article IV to the entire tax base for state income tax purposes. However, the limitation of this sentence only applies where Article IV is employer for all subdivisions of a state. In determining the amount of the limitation as to a particular state, a taxpayer may use as a measure against the entire tax base method of apportionment or allocation which is permissible under Article IV.

If he is reporting to the state, for state income tax purposes, under Article IV, the amount he apportions and allocates to the state or reports on a separate accounting basis shall be the amount of the limitation.

If he is not so reporting to the state, he should use the same factors in determining the limitation as the factors used in reporting to the subdivisions. Where the subdivisions within a state do not all require the same combination or types of apportionment factors, or where some subdivisions use separate accounting and others require the use of apportionment factors, the three factor formula of Article IV shall be used in determining the limitations. He cannot use as a measure the amount which he would report to the state under separate accounting (if he were to report), where he is not using separate accounting in reporting to the subdivisions. If he is using separate accounting in reporting to the subdivisions, the limitation also is to be determined by separate accounting.

Reg. III.2.(a). Taxpayer option, short form; implementation by states.—
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Reg. Taxpayer option, short form; implementation by states.—

The requirement that each party state "shall provide by law" for the option contained in this provision of the compact ordinarily should be made by statute. Where there is sufficient general statutory authority for the agency involved to make a rate provision by regulation promulgated under its general income tax laws, it may be so done.

Reg. III.2.(b). Liberal construction.—
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Reg. Liberal construction.—

The phrase "whose only activities within the taxing jurisdiction consist of sales" will be given a liberal construction so as to afford to as many taxpayers as possible the tax option provided by this Article III.2. For this reason, and because this article does not provide jurisdictional tests the test of "activities" consisting of "sales" is not the same as the test of "solicitation" under Public Law 86-272. For example, the option to utilize the short form return is available to taxpayers selling tangible personal property or services, and who carry on such activities as checking credit, making collections, accepting orders within the state, or participating in the installation or repair of the product in connection with such selling activities.

The option is not available when the taxpayer owns or rents real estate or tangible personal property. "Tangible personal property" does not include the carrying of samples or the maintenance of a stock of samples at the salesman's residence, but does include

maintaining an inventory in the state when title is retained or a substantial property interest is retained. Likewise, in line with the liberal construction to be accorded this provision, the use of a car by the taxpayer's representatives does not preclude the election of the option.

Reg. III.2.(c). Computation of gross sales.—

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Reg. Computation of gross sales.—

The construction and interpretation of "activities" consisting of "sales" and of "gross sales" shall be, insofar as possible, the same. For example, the gross dollar volume of a taxpayer from its sales activities (total sales, cash or accrued, as computed under the taxpayer's ordinary accounting procedures, less returns and discounts) shall be the measure of whether the taxpayer comes within the \$100,000 requirement.

Each compact state shall provide such forms as may be necessary for taxpayers reporting to that state under this Article III.2. Adjustment of the \$100,000 figure shall be by Multistate Tax Commission regulation and shall be binding upon all compact states. The five-year period within which only one adjustment of such figure is allowable under the compact shall begin January 1, 1968, and terminate December 31, 1972. The adoption of such figures shall be made at a regular meeting of the commission, in such manner as may be provided by the commission's bylaws.